IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

         Plaintiff,

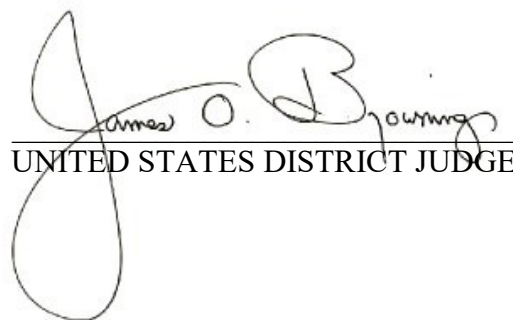vs.   No. CR 20-1629 JB

TONY GAUNA,

         Defendant.

NOTICE AND ORDER

Attached is the Court's opinion in United States v. Martinez, No. CR 19-3725 JB, Unsealed Memorandum Opinion and Order, filed July 12, 2021 (Doc. 303)("MOO"). In its MOO, the Court concludes that it does not have to recuse from Defendant Jody Rufino Martinez' case under 28 U.S.C. § 455(a) and United States v. Greenspan, 26 F.3d 1001 (10th Cir. 1994), because the alleged threat against the Court is not as serious as the threat in United States v. Greenspan, and the Court has not, and Martinez does not allege that the Court has, taken any action against him because of the threat.

Here, under § 455(a), the Court has determined that it does not have to recuse in this case. Defendant Tony Gauna's position in this case is different than Martinez' position; therefore, the Court directs Gauna to look at the MOO to see if he agrees with the Court's analysis and its decision not to recuse in his case. The Court directs also Plaintiff United States of America to share the MOO with its appellate lawyers and determine whether it will defend the Court's decision on appeal and not confess error; the United States should send a letter or file something with the Court discussing the results of the discussion and its position on the Court's decision. The Court has filed similar notices in: (i) United States v. Angel Deleon, et al., No. CR 15-4268 JB; (ii)

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<u>United States v. Jonathan Gomez</u>, No. CR 19-3726 JB; and (iii) <u>United States v. Robert Padilla</u>,

No. CR 19-3113 JB.

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UNITED STATES DISTRICT JUDGE

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